

6-260A028

SEP 16 1976

Fee \$ 50.00

ICC Washington, D. C.

CONSOLIDATED RAIL CORPORATION
SIX PENN CENTER PLAZA
PHILADELPHIA, PENNSYLVANIA 19104

September 15, 1976

Honorable Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, DC 20423

RECORDATION NO. 8480 Filed & Recorded

SEP 16 1976 10 22 AM

SEP 16 10 18 AM '76
I.C.C.
FEE OPERATION BR.

INTERSTATE COMMERCE COMMISSION

Dear Sir:

Will you please record as provided in Section 20c of the Interstate Commerce Act, Railroad Equipment Lease dated as of September 1, 1976, between Canadian National Railway Company and Consolidated Rail Corporation. Six counterpart originals of the Lease are enclosed with this letter of transmittal, together with a check in the amount of \$50.00.

The information required for such recordation by order of the Interstate Commerce Commission is as follows:

1116.4(b) - The names and addresses of the parties to the transaction:

Lessor: Canadian National Railway Company
CN Building
Montreal, P.Q.
Canada

Lessee: Consolidated Rail Corporation
Six Penn Center Plaza
Philadelphia, Pa. 19104

1116.4(c) - General description of the equipment:

<u>Type of Unit</u>	<u>A.A.R. Mechanical Designation</u>	<u>No. of Units</u>	<u>Marked</u>	<u>Numbered</u>
GP-35, 2500 H.P. Diesel Locomotives	B-B	2	Canadian National	CN4000-4001
GP-40, 3000 H.P. Diesel Electric Locomotives	B-B	10	Canadian National	CN4002-4011
GP-40, 3000 H.P. Diesel Electric Locomotives	B-B	4	Canadian National	CN4012-4015

J. J. Taylor

Counterpart -

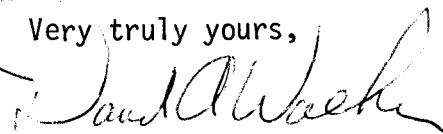
Honorable Robert L. Oswald
September 15, 1976
Page Two

<u>Type of Unit</u>	<u>A.A.R. Mechanical Designation</u>	<u>No. of Units</u>	<u>Marked</u>	<u>Numbered</u>
C-424, 2400 H.P. Diesel Electric Locomotives	B-B	1	Canadian National	CN3201
C-424, 2400 H.P. Diesel Electric Locomotives	B-B	13	Canadian National	CN3202-3211 3215, 3217-3218
C-424, 2400 H.P. Diesel Electric Locomotives	B-B	2	Canadian National	CN3214, 3216
C-424, 2400 H.P. Diesel Electric Locomotives	B-B	11	Canadian National	CN3225-3228, 3230, 3233-3234, 3236-3237, 3239- 3240
M-636, 3000 H.P. Diesel Electric Locomotives	C-C	11	Canadian National	CN2305, 2307- 2309, 2313-2317, 2319-2320
M-636, 3000 H.P. Diesel Electric Locomotives	C-C	15	Canadian National	CN2322-2328, 2332-2339
GP-40, 3000 H.P. Diesel Electric Locomotives	B-B	31	Canadian National	CN9488-9518

1116.4(d) - The Lease has not been previously recorded with the Commission.

1116.4(e) - Four counterpart originals of the Agreement being recorded should be returned to the undersigned at 1138 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, in the hands of the messenger presenting this.

Very truly yours,



David A. Walker

DAW:td
Encs.

Interstate Commerce Commission
Washington, D.C. 20423

9/16/76

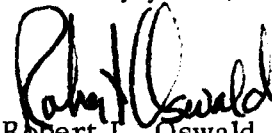
OFFICE OF THE SECRETARY

Mr. David A. Walker
1138 Six Penn Center Plaza
Philadelphia, Pa. 19104

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 9/16/76 at 10:20am , and assigned recordation number(s) 7980

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

SEP 16 1976 -10 22 AM

INTERSTATE COMMERCE COMMISSION

LEASE AND SUB-LEASE OF RAILROAD EQUIPMENT,
(hereinafter called the "Lease"), dated as of
September 1, 1976, by and between CANADIAN NATIONAL
RAILWAY COMPANY, a Canadian corporation (hereinafter
called "Lessor"), and CONSOLIDATED RAIL CORPORATION,
a Pennsylvania corporation (hereinafter called "Lessee").

WHEREAS, Lessor owns sixty-nine (69) Diesel-
electric locomotives, bearing Lessor's road numbers and
described in Schedule 1 of this Lease (hereinafter
called the "Equipment" and each a "Unit"), and

WHEREAS, Lessor has leased thirty-one (31)
Diesel-electric locomotives, bearing Lessor's road
numbers and described in Schedule 3 of this Lease
(hereinafter included within "Equipment" and each
called a "Unit"), from IAC Limited, a Canadian
corporation (hereinafter called "IAC"), under a
Lease Agreement dated as of December 1, 1975 between
IAC and Lessor (hereinafter called the "Prior Lease"),
and

WHEREAS, Lessee has received a copy of the
Prior Lease, and, by its execution hereof acknowledges
such receipt and confirms that it is fully aware of all

terms and covenants of the Prior Lease, and

WHEREAS, IAC has consented to this sub-lease of the Units described in Schedule 3, and

WHEREAS, Lessor desires to lease and sub-lease the Equipment to Lessee and Lessee desires to hire the same from Lessor;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Lessor hereby leases and sub-leases the Equipment unto Lessee, and Lessee hereby hires the Equipment from Lessor, for the term and at the rentals and subject to the other terms and provisions herein set forth, and respecting the sub-leased Units described in Schedule 3, subject to all terms, covenants and provisions of the Prior Lease and to all rights and remedies of IAC and its assigns thereunder.

2. Lessor shall deliver the Equipment to Lessee in good order and proper repair, on dates to be mutually agreed, at Fort Erie, Ontario, as soon as possible after this Lease is recorded and deposited by Lessee as provided in Section 19 hereof. At the time of such delivery, and

of redelivery to Lessor at the end of its term, a joint inspection of each Unit shall be made by representatives of the parties and a joint written report of the Unit's condition (in the form of Schedule 2 of this Lease) shall be signed by such representatives and a copy of same furnished to each party. Any difference between the value of fuel, lubricants or supplies with which the Unit is furnished upon delivery and the value of same upon redelivery at the end of the term shall be settled between the parties forthwith after such redelivery.

3. Lessor and IAC make no warranty or representation, either expressed or implied, as to the fitness, design or condition of, or as to the quality of the material, equipment or workmanship in, the Equipment, or as to any patented features thereof or as to Lessor's property therein, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee.

4. The term of this Lease with respect to each Unit shall commence on the date of its delivery to and acceptance by Lessee hereunder and extend for a period of eighty nine days (89) and thereafter from month to month, subject to termination at any time on or after expiration of the said

eighty nine day period, by either Lessor or Lessee, with respect to any or all the Units, on not less than thirty (30) days prior written notice one to the other.

5. As the rental for each Unit of the Equipment, Lessee shall pay in cash to Lessor \$175.00 (Canadian funds) per day for each Unit, commencing on the day the Unit is delivered to Lessee and ending on the day preceding the day of its redelivery to Lessor and subject to the provisions of Sections 15, 16 and 20. Such rental shall be paid monthly upon receipt of Lessor's bill therefor.

6. As further rental for each Unit of the Equipment, Lessee shall pay in cash to Lessor 45¢ (Canadian funds) for each mile the Unit operates, commencing upon delivery to Lessee and ending at the time of its redelivery to Lessor. The Lessor shall bill the Lessee monthly for such rental on the estimated basis that each Unit operated 270 miles on each day of the month that the Unit was covered by this Lease, subject to pro rata reduction for any period or periods of rental abatement pursuant to Sections 15, 16 or 20, and rental on such basis shall be paid by Lessee upon receipt of Lessor's bill therefor. The Lessee shall report to Lessor, on or before the 90th day following the end of each month, the actual number of miles each Unit operated during such month,

and the difference between the actual mileage and the estimated mileage for the Unit for that month shall be adjusted between the parties on the next monthly billing date, provided however that in no event shall the total monthly mileage rental for all the Equipment payable under this Section be less than an amount equal to the product of the said mileage rate times the number 270 for each day of the month that any Unit was covered by this Lease, subject to pro rata reduction for any period or periods of rental abatement pursuant to Sections 15, 16 or 20.

7. Lessee shall, during the continuance of this Lease, in addition to the rentals herein provided, promptly pay all taxes, assessments and other governmental charges (including, without limitation, any and all amounts in respect of taxes withheld or caused to be withheld by any United States Governmental authority from any rental payment made hereunder, and any and all custom duties imposed upon the Equipment by Canada or the United States) imposed upon or in respect to the Equipment by reason of or in connection with the delivery of the Equipment into the United States or the return thereof to Canada or by reason of or in connection with Lessee's possession and use thereof under the Lease, provided that Lessee shall not be required to pay the same (1) so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the judgment of Lessor, the rights or interest of Lessor or IAC will be materially endangered or (2) if and to the extent that the Lessor is entitled to obtain



a tax credit in respect thereof.

8. At all times during the continuance of this Lease, Lessee will cause all the Units to bear Lessor's markings and the identifying numbers indicated in Schedule 1 and 3. Lessee will not allow the name of any person, association or corporation to be placed on any of the Equipment as a designation which might be interpreted as indicating a claim of ownership thereof or interest therein by any person, association or corporation other than Lessor or IAC, as the case may be.

9. During the continuance of this Lease, Lessee, so long as it shall not be in default hereunder, shall be entitled to possession of the Equipment and the use thereof on lines of railroad owned or operated by it in the United States, or over which it has trackage rights or rights for operation of its trains in the United States or Canada.

10. Lessee shall comply with all laws and regulations of any state, province or governmental authority and with all rules of the Association of American Railroads respecting the manner of using the Equipment, or any thereof, during the continuance of this Lease. Lessee shall have the right, without cost or expense to Lessor, to make any replacement,

change, substitution or addition of any device or appliance on any Unit of the Equipment, but any parts installed or replacements made by Lessee upon any such Unit shall be considered as accessions thereto and title thereto shall be immediately vested, respecting Schedule 1 Units, in Lessor and, respecting Schedule 3 Units, in IAC.

11. Prior to termination of this Lease, Lessee shall not by virtue of this Lease or the possession and use of the Equipment by Lessee under or pursuant to this Lease or of anything permitted to be done by Lessee hereunder in respect of the Equipment acquire title to or any property interest in the Equipment or any thereof.

12. The Lessor shall, at its own cost and expense:

- (a) perform, in its shop facilities, scheduled mileage inspections, and repairs associated therewith, of the Equipment in accordance with the Lessor's maintenance inspection schedules for the Units, and
- (b) perform, in its shop facilities (or at its option be responsible for the cost of) major repairs of the Equipment which are normally

performed in a main railway shop and are necessitated by reason of failure of main engines or main generators and require 50% or more renewal of power assemblies, crankshaft or block repairs or removal of the main generator for corrective repair work, provided, however, that such major repairs shall have resulted from ordinary wear and tear of the Units, and have not been caused (except while the Unit or Units were within the Lessor's possession) by derailment, collision or other operational accident, vandalism, misuse, abuse or neglect.

13. (a) For performance by Lessor of the work provided in Section 12 (a), Lessee shall return each Unit to the Lessor at Fort Erie, Ontario or Montreal, Quebec (in quantities of not more than three (3) Units per day at each location), after every 15,000 miles of operation or forty five (45) days (whichever occurs sooner), and all as directed by Lessor.
- (b) For performance by the Lessor of the work provided in Section 12 (b), the Lessee shall return the damaged Units to the Lessor at Fort Erie, Ontario

or Montreal, Quebec, as directed by the Lessor.

14. Subject to the provisions of Section 12 , the Lessee shall, at its own cost and expense, maintain and keep the Equipment in as good order and repair as when delivered to it under this Lease, ordinary wear and tear excepted, and without limiting the generality of the foregoing shall be responsible for wheel trueing and running and main shop repairs other than those provided in Section 12 as being the responsibility of Lessor.

15. In the event that major repairs which are the responsibility of Lessor under Section 12 (b) shall become necessary on any Unit of the Equipment, Lessee shall notify Lessor of the necessity for such repairs and Lessor shall thereafter instruct Lessee with respect to the disposition of such Unit. Rental payments shall stop on said Unit requiring such major repairs for the period from the time of such notification by Lessee to Lessor until completion of such repairs and release of the Unit for service.

16. In the event that the work on any Unit to be performed by the Lessor under Section 12 (a) not be completed within 24 hours, rental payments respecting such Unit shall stop for the period following 24 hours after delivery of the Unit to Lessor until such Unit is released for service and the Lessee so notified. Such rental abatement shall be calculated on an hourly pro-rated basis, with relevant times being taken as of the nearest hour.

17. Upon the termination of this Lease with respect to any Unit of the Equipment, Lessee shall with reasonable promptness transport such Unit to Fort Erie, Ontario, and there surrender the same to Lessor, subject to the provisions of Section 12, in as good order and repair as when delivered to Lessee under this Lease, ordinary wear and tear excepted. Liabilities and obligations arising under this Lease shall survive any termination of the Lease.

18. Without the prior written consent of Lessor or IAC, as the case may be, Lessee shall not (a) assign, transfer or encumber its leasehold interest under this Lease

or (b) loan, hypothecate or otherwise transfer or dispose of any of the Equipment.

19. Promptly after the execution and delivery of this Lease, Lessee shall at its expense cause this Lease and any amendments or supplements hereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be deposited with the Registrar General of Canada in accordance with Section 86 of the Railway Act of Canada (1970 - RSC) and forthwith after such deposit will cause notice of such deposit to be given in The Canada Gazette pursuant to said Section 86. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor or IAC, for the purpose of proper protection, to the satisfaction of counsel for Lessor, of its interest in the Equipment, or for the purpose of carrying out the intention of this Lease. Lessee will pay all costs, charges and expenses incident to the filing, re-filing, registering, re-registering, recording and re-recording of any such instruments or incident to the taking of any such action.

20. In the event that any Unit shall be or become lost, stolen, destroyed, or damaged or destroyed beyond economical repair from any cause whatsoever, rental with respect to such Unit thereupon shall cease, but in such case (and provided that such casualty did not occur while the Unit was within the Lessor's possession) Lessee shall forthwith pay Lessor in cash the value for such Unit indicated on Schedule 1, less the salvage value for the remains of any such Unit returned by the Lessee (at the Lessee's cost and expense) to the Lessor at Fort Erie, Ontario, or Montreal, Quebec, such salvage value to be calculated, as of the casualty date, on a per ton basis, at the market prices published in the American Metal Market Journal, for the steel content in such Unit at the price in Hamilton, Ontario for No. 1 heavy melting ferrous scrap and for the copper content in such Unit at the Canadian copper price.

21. Lessor may, at any time or from time to time, replace any Units requiring major repairs as provided in Section 12 (b), or which are lost, stolen or destroyed as provided in Section 20, with Units of like or similar specifications and such replacement Units, as and from the date of their delivery and acceptance by the Lessee in accordance herewith, shall be deemed to be subject to all terms and conditions of this Lease as if the same had been originally delivered to Lessee at the time and in the place of Units for which they are substituted. The parties shall execute amendments to this Lease and such other or further documents as may be

required by either party to include any substituted Units within the terms and provisions of this Lease.

22. If either party hereto shall fail to observe and perform any covenant, condition or agreement herein on its part to be observed and performed, and such failure shall continue for ten (10) days after receipt of written notice from the aggrieved party specifying the failure and demanding that same be remedied, then, in any such case, the aggrieved party at its option, may:

- (a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance of the applicable covenants, conditions or agreements of this lease or to recover damages for the breach thereof, or
- (b) by notice in writing to the defaulting party immediately terminate this Lease, and thereupon the Equipment then in the possession of Lessee shall be redelivered promptly by Lessee to Lessor in accordance with the provisions of Section 17 hereof, and in the event Lessee does not promptly

so redeliver the equipment to Lessor, Lessor shall have the right to enter upon the premises of Lessee and take possession of the Equipment.

The aforesaid remedies shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies existing at law or in equity in favour of either party.

23. Lessor covenants that Lessee shall lawfully, peaceably, and quietly hold, possess, and enjoy the Equipment covered by this Lease, without any let, hindrance, dispossession, or interference by Lessor or anyone lawfully claiming by, through or under Lessor, except pursuant to the provisions of this Lease.

24. Lessee does hereby release, indemnify and save harmless Lessor and IAC, its or their successors and assigns, from and against any and all liability, loss, cost, damage, charges and expense which Lessor or IAC may incur, suffer or be in any way subjected to, resulting from or arising out of injury to or death of any person or persons whomsoever, and the loss or destruction of

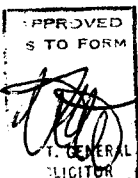
or damage to any property whatsoever of any persons, firm or corporation, including but not limited to the property of the parties hereto or in the care or custody of the parties hereto and from any and all claims, demands, or actions for such loss, injury or damage, caused by, growing out of, or in any way connected with the Lease, possession, use, maintenance or operation of said Equipment by Lessee whether attributable to the fault, failure or negligence of Lessor or otherwise. The foregoing release and indemnification shall apply to matters or things occurring only between the time said Unit or Units are delivered to Lessee and re-delivered to Lessor (save and except while the said Unit or Units are within the Lessor's possession).

25. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Province of Ontario.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Lease of Railroad Equipment, as of the date first above written.

ATTEST:

CANADIAN NATIONAL RAILWAY COMPANY



DEPUTY

Secretary


By

J. B. Cairns
Vice-President

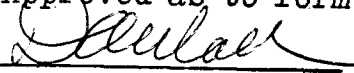
ATTEST:

CONSOLIDATED RAIL CORPORATION


Assistant Secretary

By 
CHAIRMAN OF THE BOARD

Approved as to form



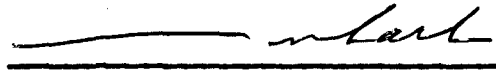
D. A. Walker

Ass't. Corp. Counsel



PROVINCE OF QUEBEC)
CITY OF MONTREAL) ss:

On this ^{14th} day of ~~September~~, 1976, before me personally appeared ^{G. X Lann}, to me personally known, who, being by me duly sworn, says that he is a Vice President of CANADIAN NATIONAL RAILWAY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

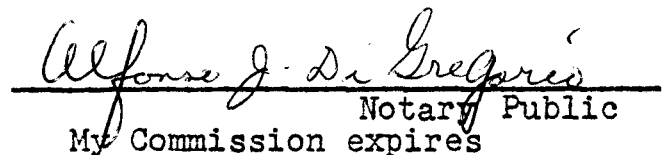


G. ERIC URQUHART
COMMISSIONER FOR OATHS
COMMISSAIRE À L'ASSERMENTATION
DISTRICT - MONTREAL

STATE OF PENNSYLVANIA)
CITY OF PHILADELPHIA) ss:

On this ^{15th} day of ~~September~~, 1976, before me personally appeared E. G. JORDAN, to me personally known, who, being by me duly sworn, says that he is CHAIRMAN OF THE BOARD of CONSOLIDATED RAIL CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)




Notary Public
My Commission expires

ALFONSO J. DIGREGORIO

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires August 7, 1980

SCHEDULE 1

<u>Quantity</u>	<u>Type</u>	<u>Identifying Nos.</u> <u>(Both Inclusive)</u>	<u>Value</u> <u>(per unit)</u> (Canadian Funds)
2	GP-35, 2500 H.P. Diesel Locomotives	CN4000-4001	\$208,160.
10	GP-40, 3000 H.P. Diesel Electric Locomotives	CN4002-4011	\$262,526
4	GP-40, 3000 H.P. Diesel Electric Locomotives	CN4012-4015	\$293,854.
1	C-424, 2400 H.P. Diesel Electric Locomotives	CN3201	\$240,945.
13	C-424, 2400 H.P. Diesel Electric Locomotives	CN3202-3211, 3215, 3217-3218	\$274,145.
2	C-424, 2400 H.P. Diesel Electric Locomotives	CN3214, 3216	\$280,370.
11	C-424, 2400 H.P. Diesel Electric Locomotives	CN3225-3228, 3230, 3233-3234, 3236-3237, 3239- 3240	\$294,895.
11	M-636, 3000 H.P. Diesel Electric Locomotives	CN2305, 2307-2309, 2313-2317, 2319- 2320	\$480,539.
15	M-636, 3000 H.P. Diesel Electric Locomotives	CN2322-2328, 2332- 2339	\$495,881.



CANADIAN NATIONAL RAILWAYS

SCHEDULE 2

City

Date

We, the undersigned, made joint inspection of C.N.R. Locomotive No. _____
today, _____, said locomotive being _____ by
Leased or returned

Lessee

Address of Lessee

Joint inspection made at _____.

MECHANICAL CONDITION

ELECTRICAL CONDITION

EQUIPMENT

No.

No.

Flags
Fuses
Rerailers

SUPPLIES

Gals. of Fuel Oil
Gals. of Lube Oil
400 Amp Fuse
150 Amp Fuse
100 Amp Fuse
80 Amp Fuse

Delivered in charge of _____

Time _____

Date _____

Name _____

Name _____

Title _____

Title _____

Name _____

Name _____

Title _____

Title _____

Name _____

Name _____

Title _____

Title _____

(FOR LESSOR)

(FOR LESSEE)



SCHEDULE 3

<u>Quantity</u>	<u>Type</u>	<u>Identifying Nos.</u> <u>(Both Inclusive)</u>	<u>Value</u> <u>(per unit)</u> (Canadian Funds)
31	GP-40, 3000 HP Diesel Electric Locomotives	CN 9488-9518	\$401,583.

Roll